

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

JOSHUA NEDDO, GERALDINE NEDDO,
AND KAILEYAH NEDDO,
Plaintiffs,

V.

NEW PRIME, INC. AND BENJAMIN
JAMES DOUGHERTY,
Defendants.

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Civil Action No. 5:18-CV-00139

NOTICE OF REMOVAL

TO THE HONORABLE COURT:

COME NOW Defendants New Prime, Inc. and Benjamin James Dougherty and file their Notice of Removal, and would respectfully show unto the Court as follows:

PROCEDURAL HISTORY

1. Plaintiffs filed suit in Cause No. 2017CI19713, in the 166th Judicial District Court of Bexar County, Texas on or about October 2, 2017. Defendant New Prime, Inc. was served on or about January 16, 2018, and filed a timely answer on January 26, 2018. Defendant Benjamin James Dougherty was not served, but filed an answer on February 9, 2018.

2. Defendants have therefore filed this Notice of Removal within the time period required by 28 U.S.C. § 1446(b).

NATURE OF THE SUIT

3. Plaintiffs allege that on or about May 12, 2017, they sustained damages as a result of a motor vehicle collision that occurred in Bexar County, Texas.

4. According to Plaintiffs' Original Petition, Plaintiffs are citizens of the State of Texas, residing in Bexar County, Texas. *See* Plaintiffs' Original Petition, paragraph 2.

5. At the time of the filing of Plaintiffs' Original Petition and at the time of the Defendants' Notice of Removal, Defendant Benjamin James Dougherty was a citizen of the State of Missouri, with a domicile at 1502 W. Frosty Drive, Unit #4, Ozark, Missouri 65721. *See, Exhibit A*, Affidavit of Benjamin James Dougherty.

6. At the time of the subject accident, at the time of the filing of Plaintiffs' Original Petition, and presently New Prime, Inc. is a corporation with its principal place of business in the State of Missouri.

7. Defendant New Prime, Inc. is a company incorporated under the laws of the State of Nebraska.

BASIS FOR REMOVAL

8. Removal is proper because there is complete diversity of citizenship between Plaintiffs and Defendants.

9. Plaintiffs are individual residing in Bexar County, Texas. *See* Plaintiffs' Original Petition, paragraphs 2, 3 and 4.

10. Defendant Benjamin James Dougherty is an individual who at the time the lawsuit was filed and at the time of the Defendants' Notice of Removal was domiciled in Ozark, Missouri. At all relevant times, Defendant Benjamin James Dougherty established his citizenship in the State of Missouri where he currently lives, works, is licensed, and has a bank account. *See, Exhibit A*, Affidavit of Benjamin James Dougherty.

11. Defendant New Prime, Inc. is a corporation incorporated under the laws of the State of Missouri, whose principal place of business has at all relevant times been maintained in the State of Missouri and whose citizenship is in the State of Missouri. Further, New Prime, Inc.

was incorporated in the State of Nebraska and is also a citizen of Nebraska for purposes of diversity jurisdiction.

12. As conveyed in Plaintiffs' Original Petition, the amount in controversy exceeds \$1,000,000.00, exclusive of interests, costs, and attorneys' fees. See Plaintiffs' Original Petition, paragraph 9.

VENUE AND JURISDICTION

13. Venue for this removal is proper in this district under 28 U.S.C. § 1441(a) because this district and division embrace the place in which the removed action has been pending.

14. This Court has jurisdiction of this action by virtue of the provisions of 28 U.S.C. § 1332 in that this is a case of diversity of citizenship between the parties with the amount in controversy exceeding \$75,000.00, exclusive of interest and costs.

DEFENDANTS' NOTICE OF REMOVAL IS PROCEDURALLY CORRECT

15. Defendants have attached to this notice all process, pleadings and orders filed in the state court action as required by 28 U.S.C. §1446(a). (See **Exhibit B**, Index of Matters Being Filed)

JURY DEMAND

16. Plaintiffs made a demand for a jury trial in State District Court. Defendants New Prime, Inc. and Benjamin James Dougherty also made demands for a jury trial in State District Court.

NOTICE TO STATE COURT

17. Defendants will promptly file a copy of this Notice of Removal with the Clerk of the State Court in which this action is pending.

Respectfully submitted,

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ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

I hereby certify that the foregoing has been electronically filed with the Clerk of the Court using the CM/EMF system which will send notification of such filing and has been sent via facsimile to the following:

FACSIMILE: 361/985-0601

Omar S. Rivero
Christopher Ross
THE LAW OFFICES OF THOMAS J HENRY
5711 University Heights Blvd., Ste. 101
San Antonio, TX 78249

in accordance with the Federal Rules of Civil Procedure, on this 12th day of February, 2018.

/s/ Lynn S. Castagna
Lynn S. Castagna